NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4355-12T2

DAVID'S WAREHOUSE
SALES, INC.,

Plaintiff-Respondent,

v.

A&H HOME STYLE, INC. and
GLEN DELAMOTTE,[1]

Defendants.

and

JUN HUA ZHANG, a/k/a
SHERRY ZHANG,

Defendant-Appellant,

Submitted September 15, 2014 – Decided May 27, 2015

Before Judges Espinosa and Rothstadt.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-4328-11.

Jun Hua Zhang, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

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[1] The complaint against DelaMotte was dismissed.

Following a bench trial, the court entered a $79,520 judgment against the corporate defendant, A&H Home Style, Inc. (A&H). The court found cause to pierce the corporate veil and entered judgment against defendant Jun Hua Zhang (Zhang)[2] individually as well. In this appeal, Zhang only challenges the judgment against her, individually. We agree with Zhang's argument on appeal[3] that it was reversible error for the court to pierce the corporate veil under the facts of this case. Therefore, we need not address the other points of her brief, which discuss principles of law not relevant to our decision.

I.

Plaintiff, David's Warehouse Sales, Inc., specializes in the purchase and resale of overstock items. David Weber is its principal. One of the many brokers plaintiff used was John Corbino. A&H was a corporation, located in both China and Edison that imported clothing and bedding from China to the United States. It is now closed. Zhang was A&H's owner and principal. Glen DelaMotte was self-employed as a sales representative. He had an agreement with Zhang that he would receive a commission of five percent on any sale he arranged.

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[2] Zhang uses the "English name" of Sherry Zhang.

[3] Initially, Zhang filed a notice of appeal on behalf of herself and A&H. She filed an amended notice of appeal that only identified herself as appellant.

In March 2011, Corbino contacted Weber, offering him a deal to purchase approximately 20,000 leather jackets owned by A&H for a price of $19 per jacket. Weber contacted DelaMotte and requested that sample jackets be sent to him and to Corniche Apparel, a prospective customer of his in New York. After reviewing the samples, Weber sent an email to DelaMotte and Corbino, that stated,

> Please use this email as my preliminary purchase order for the leather jackets of 20,000 plus or minus units. Call me Friday between noon and 4:00 east coast time in my office when it's convenient for you and Sherry. I will need to slightly lower the price and need to make a final decision tomorrow.

Weber testified that the price ultimately agreed upon was $16 per jacket and that he intended to sell the jackets at a price of $21 per jacket plus a $7500 labor charge for re-ticketing the jackets.

Daniel Lehr, of ITE General Power Corporation, sent an email to DelaMotte in which he described himself as the "financing arm for the leather jacket transaction." In the email, Lehr provided his plan to inspect the goods at A&H's warehouse and stated once he confirmed "all is in order as described and presented," he would "instruct [his] company to wire transfer $424,000 to be made out to Citibank U.S.A. account." Weber was present on one day of the inspection and left. Following Lehr's inspection, the funds

were wired directly to defendants rather than to plaintiff and the merchandise was released to him.

Weber testified he expected to be paid "the difference between the $16 and the $21, . . . [his] broker/finders fee to bring that customer to fruition," totaling "roughly $95,000, $96,000." He admitted he had no written agreement or even an email to confirm such an arrangement. In fact, he testified he "did not have much discussion" with Zhang because of the language barrier, and in one email stated he only understood half of what she said.

Weber later sent an email to DelaMotte that purported to memorialize the agreement. Defendants did not respond. According to Weber, he later heard from DelaMotte that after the payment from Lehr, "they thought it was exorbitant the amount of money [he] was making, and they offered [him] a $1.50 per jacket . . . commission," which would amount to $25,500. However, plaintiff also submitted the following email, sent from DelaMotte to Weber on May 23, 2011:

> David, Sherry will give you $1.00. And if you accept this, Sherry will give it to you out of her pocket rather than wait for China to respond. I spoke with her in detail on this matter, she is still upset about how rudely you spoke to her prior, as I am also. If you wish to accept this deal I need a fax, an agreement that you will accept $1.00, and sign the fax and sent it to me. . . . Then this money will be wired to you.

Weber testified it was his understanding that Zhang "was basically the representative for a company in China," and the money went to China directly.

DelaMotte testified there had been a "major confusion" about the deal caused by Weber. According to DelaMotte, Weber was responsible for paying the $7500 labor charge for re-ticketing. When Weber left after only one-half day of the three-day inspection process, he had failed to pay the labor charge. As a result, Zhang had to pay the labor charge. DelaMotte stated Weber "reneged on his agreement," leaving to avoid paying the labor costs and remaining out of touch with defendants. DelaMotte testified further that Lehr told him if he liked the jackets, he would issue A&H a purchase order and wire payment directly to Zhang's home company in China, and to nobody else.

DelaMotte testified that after Lehr's inspection, Weber telephoned him and was abusive and threatening. Weber was also abusive to Zhang, who was crying when she called him. DelaMotte advised her to do nothing for Weber because of the abuse.

Zhang testified through an interpreter. She stated she did not have an agreement with plaintiff; Weber just said he was a buyer and wanted to buy all the leather jackets. She never signed anything with him. She also stated Weber was responsible to pay the $7500 labor charge and never did so. She said when Lehr

inspected the jackets, he said he wanted to talk directly with the owner of the jackets and not with anyone else "because then people may disappear and [he] couldn't get [his] merchandise." Zhang testified that Weber threatened to destroy her life and that the people in the factory back in China did not agree to pay Weber $1.50 per jacket after hearing about this threat.

Plaintiff filed this action against A&H, Zhang and DelaMotte, alleging breach of contract, conversion, tortious interference with contract, unjust enrichment, and breach of good faith and fair dealing.[4]

There was no written contract between plaintiff and defendants. And, as the trial court observed,

> Mr. Weber never confirmed in writing his understanding that he would receive $5.00 per unit, the difference between the $21 and $16 unit prices. In no communication, whether before the sale to Mr. Lehr or afterwards, does he assert that defendants owe him a specific amount.

Still, the court found in plaintiff's favor on the ground of unjust enrichment:

> Ms. Zhang sold 19,844 jackets at a price negotiated by Mr. Weber for $5 per unit more than she had agreed to sell those jackets to Mr. Weber. She received a windfall of $5 per unit. There is no reason why she should benefit from that circumstance. To allow Ms.

[4] A copy of the complaint is not included in the record before this court. We rely upon the description contained in the trial court's written decision.

> Chang [sic] or her enterprise to do so would constitute an unjust enrichment.

The trial court found the following as justification for piercing the corporate veil to find Zhang personally liable:

> Ms. Zhang personally signed the certification . . . [in which she stated she owned the jackets and that they were free of liens and encumbrances] without any corporate designation. That certification identified her as the owner. Mr. DelaMotte testified that he had been hired by Ms. Zhang, not by her corporation. It is clear to this court that she operated as an individual when that met her purposes.

Turning to damages, the court noted they need not be determined precisely and that a "finder of fact may determine damages by exercising its discretion to award a reasonable amount." The court calculated damages as follows:

> Here, 19,880 jackets were sold to Mr. Lehr [$416,720 divided by $21 for each jacket].[5] Ms. Zhang and her company would not have received this sum without the efforts of Mr. Weber. In light of the failure of Mr. Weber to have documented in writing the extent of his compensation, a fair allowance for Mr. Weber's contribution is $4 per unit, or a total of $79,520.

[5] The court's calculation is incorrect. The testimony failed to establish the exact number of jackets that were sold and the division of the amount paid by the unit price fails to take into account the $7500 labor charge that was added to the price of the jackets.

II.

The scope of our review of a judgment entered in a non-jury case is limited. Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 483-484 (1974). When "supported by adequate, substantial and credible evidence," a trial court's findings "are considered binding on appeal" and "should not be disturbed unless they are so wholly insupportable as to result in a denial of justice." Ibid. (internal quotation marks and citation omitted). However, our review of legal issues is de novo, State v. Gandhi, 201 N.J. 161, 176 (2010), and requires no deference to the legal conclusions drawn by the trial court. Davis v. Devereux Found., 209 N.J. 269, 286 (2012). Even deferring to the trial court's findings of fact and credibility determinations, N.J. Div. of Youth & Family Servs. v. R.L., 388 N.J. Super. 81, 88 (App. Div. 2006), certif. denied, 190 N.J. 257 (2007), we conclude the trial court erred in finding grounds to pierce the corporate veil here.

N.J.S.A. 14A:5-30(2) provides:

> Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts of the corporation, except that a shareholder may become personally liable by the reason of his own acts or conduct.

"[A] corporation is an entity separate from its stockholders[,]" and "[i]n the absence of fraud or injustice, courts generally will not pierce the corporate veil to impose

liability on the corporate principals." Lyons v. Barrett, 89 N.J. 294, 300 (1982). "The purpose of the doctrine of piercing the corporate veil is to prevent an independent corporation from being used to defeat the ends of justice, to perpetrate fraud, to accomplish a crime, or otherwise to evade the law." State Dep't of Envtl. Prot. V. Ventron Corp., 94 N.J. 473, 500 (1983) (internal citations omitted). The bar for "injustice" that will warrant this exception is high.

As the party seeking to pierce the corporate veil, plaintiff had the burden to demonstrate grounds to justify doing so. Richard A. Pulaski Constr. Co. v. Air Frame Hangars, Inc., 195 N.J. 457, 472 (2008); Verni ex rel. Burstein v. Stevens, 387 N.J. Super. 160, 199 (App. Div. 2006), certif. denied, 189 N.J. 429 (2007). To strip the corporate veil's protection as to a particular person requires proof of his or her personal complicity in the misuse of the corporation or in failure to observe corporate formality. See Marascio v. Campanella, 298 N.J. Super. 491, 502 (App. Div. 1997) (finding veil piercing unjustified when based solely on a shareholder's payment of corporate obligations from his personal bank account).

The evidence presented and relied upon by the trial court fails to show any misuse of the corporation.[6] The mere fact that Zhang signed a certification without a corporate designation does not establish a failure to observe corporate formality. And, even if DelaMotte believed he was hired by Zhang rather than the corporation, his personal belief does not constitute competent evidence on this issue.

The trial court found Zhang used the corporation as her alter ego, stating "she operated as an individual when that met her purposes." Even if we accept that finding as supported by the record, it is insufficient for the application of the alter ego doctrine. See e.g., Shotmeyer v. N.J. Realty Title Ins. Co., 195 N.J. 72, 86-87 (2008) (finding alter ego doctrine did not apply where plaintiffs "did not use their partnerships to commit fraud or defeat the ends of justice"). The evidence here reflected that Zhang's actions were under the control of the corporate entity in China and even Weber testified it was his understanding that Zhang "was basically the representative for a company in China." Finally, an effort to pierce the corporation veil could not succeed

[6] The types of factors that reflect misuse of the corporation include whether the corporation was undercapitalized at its formation, whether the principals failed to observe corporate formalities, insolvency, and the absence of corporate records or accounts. See Ventron, supra, 94 N.J. at 500, 501; Canter v. Lakewood of Voorhees, 420 N.J. Super. 508, 519-21 (App. Div. 2011).

because the proofs failed to show that Zhang used the character of an "independent corporation . . . to defeat the ends of justice, to perpetrate fraud, to accomplish a crime, or otherwise to evade the law." Ventron, supra, 94 N.J. at 500.

We therefore reverse and direct that the judgment against Zhang be vacated.